Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	**CC Docket No. 96-262**
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
	)	
Transport Rate Structure and Pricing	)	**CC Docket No. 91-213**
	)	
	)	
End User Common Line Charges	)	**CC Docket No. 95-72**
	)	

TO THE SECRETARY:

PETITION FOR RULEMAKING

The Consumer Federation of America ("CFA"), [1] International Communications Association ("ICA"),[2] and National Retail Federation ("NRF")[3]

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[1]CFA is a membership organization whose more than 240 members are themselves organizations with a combined membership exceeding 50 million people. CFA engages in public advocacy and education on issues facing consumers. The primary mission of the CFA is to promote pro-consumer policies on a variety of issues before Congress, regulatory agencies and courts.

[2]ICA is the largest association of telecommunications users in the United States, with approximately 400 members who typically spend at least $1 million per year on acquisitions of information and telecommunications services and equipment. Because of ICA members' reliance on information and telecommunications technologies to improve the competitiveness of their daily operations, ICA members' telecom expenditures are growing. ICA members collectively spend approximately $32 billion annually on their information and telecommunications needs.

[3]NRF is the world's largest retail trade association with membership that includes the leading department, speciality, discount, mass merchandise, and independent stores,

respectfully petition the Commission, pursuant to 47 C.F.R. § 1.401, to initiate a rulemaking addressing the immediate prescription of interstate access rates to cost-based levels. The Commission's *First Report and Order*[4] in this docket recognized that excessive access charges are harmful to telephone consumers and to the American economy. To reduce these charges to justifiable levels, the Commission chose to rely in the first instance on the anticipated development of local service competition.

Today, however, it is clear that meaningful levels of local telephone service competition will not develop in the foreseeable future. Appellate rulings undermine the Commission's efforts to establish the basic elements of local competition, including fair and uniform pricing and reasonable access to unbundled network elements ("UNEs"), the *only* method of local competition that might actually discipline access charges on a widespread basis in the *short term*. Even the incumbent local exchange carrier ("ILEC"), Ameritech, that claims to have led efforts to implement the requirements of the 1996 act nourishing local competition recently announced that it would no longer even attempt to meet the basic rules established by the Commission.

The Commission made it clear that it would turn promptly to a

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as well as 32 national and 50 state associations. NRF members represent an industry that encompasses over 1.4 million U.S. retail establishments, employs more than 20 million people — about 1 in 5 American workers — and registered 1996 sales of nearly $2.5 trillion. NRF's international members operate stores in more than 50 nations.

[4]*First Report and Order*, In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 92-262, 94-1, 91-213 & 95-72, FCC 97-158 (rel. May 16, 1997), *review pending sub nom.* Southwestern Bell Tel. Co. v. FCC, Nos. 97-2866/2873/2875/3012 (8th Cir.).

prescriptive approach to access charges "if competition is not developing sufficiently for our market-based approach to work." *First Report and Order*, ¶ 267. Because it is now apparent that competition is not developing sufficiently to restrain and reduce access charges in the immediate future, the Commission must now fulfill that promise. Access charges must be prescribed to cost-based rates in order to ensure that captive telephone consumers are not subjected to bloated rates while yet another set of local competition plans are contemplated and tested. Also, as the Commission lowers access charges to cost-based levels, it should ensure that such access reductions are *fully* flowed through to the ultimate customer, residential and business consumers.

A. The Commission's Decision to Rely on Local Competition to Reduce Access Charges to Cost.

The Commission has acknowledged that interstate access charges must be set at the "forward-looking economic cost of providing these services." *First Report and Order,* ¶ 269; *accord id.* at ¶¶ 43, 44, 274. Excessive access charges produce "inefficient and undesirable economic behavior" and have "a disruptive effect on competition, impeding the efficient development of competition in both the local and long-distance markets." *Id.* at ¶ 30. Indeed, "non-cost based rate structures can . . . threaten the long-term viability of the nation's telephone systems." *Id.* at ¶ 165.

Today, however, access charges today massively exceed the cost-based levels found appropriate by the Commission. The continued existence of these access overcharges is not surprising. The Commission conceded that the direct regulatory actions it took in the *First Report and Order* were "not alone sufficient to create a system

that accurately reflects the true cost of service in all respects." *Id.* at ¶ 42. To the contrary, the Commission took "a primarily market-based approach to reforming access charges" that placed heavy reliance on "competitive entry into the provision of all telecommunications services" to drive those charges toward cost-based levels. *Id. at* ¶ 262-63.

Central to the Commission's market-based strategy was the development of local competition through UNEs. Thus, the Commission noted that the 1996 Telecommunications Act created a "cost-based pricing requirement for incumbent LECs' rates for . . . unbundled network elements, which are sold by carriers to other carriers." *Id. at* ¶ 262. The Commission also anticipated that ILECs would develop reasonably promptly the systems, including operations support systems ("OSS"), that would permit competitive local exchange carriers ("CLECs") to order UNEs in competitively significant volumes.

UNEs presented the promise that ILECs would face vigorous access competition from CLEC networks secured on a true cost basis. Based on this promise of cost-based competition, the Commission believed that "interstate access services will ultimately be priced at competitive levels even without direct regulation of those service prices." *Id.*

The Commission recognized, however, that its market-based approach to reducing interstate access charges might not be successful. Accordingly, it required each incumbent price cap LEC to provide a cost study in February, 2001, demonstrating its actual cost of providing interstate access services. *Id. at* ¶ 267. It cautioned, moreover,

that it would "require submission of such studies before that date if competition is not developing sufficiently for [the Commission's] market-based approach to work." *Id.*

B. There is No Prospect Local Competition Will Develop Sufficiently to Quickly Reduce Access Charges to Cost.

Almost two years after passage of the Telecommunications Act of 1996, "the overwhelming majority of consumers still have only one provider of local phone service available to them."[5] The most recent information in this docket demonstrates that CLECs terminate less than one percent of total long-distance minutes in each and every state, and are less than one-tenth of one percent (0.1%) in the vast majority of states.[6] The Commission recently established a task force to investigate the continuing lack of local competition.[7] Each time the Commission has been called upon to consider LEC compliance with the basic "checklist" requirements for local competition, it has found them wanting.[8]

Many factors have contributed to the failure of local competition to

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[5]"Local Competition Still on Hold," Nation's Business, October, 1997, at 38.

[6]Declaration of Henry G. Hultquist, filed by MCI in these dockets on June 9, 1997.

[7]"FCC Sets Up Task Force to Investigate Local Competition," Communications Daily, July 16, 1997, at 2.

[8]In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997) ("Michigan 271 Decision"); In re Application by SBC Communications, Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, FCC 97-228 (rel. June 26, 1997).

develop more quickly. New entrants have made investments in constructing alternative networks that are significant in absolute terms but that are tiny in comparison to ILEC networks. Because of the huge effort, time, and money needed to develop meaningful stand-alone facilities-based competition, both Congress and the Commission anticipated that in the short-term other means of entry would be necessary to accelerate the delivery of competition's benefits to a wide range of consumers.

Without outside pressure, most ILECs have shown little or no interest in actively facilitating local competition. Even Ameritech — so recently lauded by the Commission as among the "leaders" in "working toward opening local markets to competition"[9] — has now announced it will not even *try* to comply with the Commission's local competition "checklist." Ameritech contends it is "'impossible' to follow" the Commission's basic requirements for local competition.[10]

Appellate rulings have also invalidated key components of the Commission's plan for developing local competition. In July of this year, the United States Court of Appeals stated that the Commission lacked the authority to establish nationwide standards for the price and conditions under which ILECs would make key network elements available to carriers trying to compete locally. Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997). Recently, the same Eighth Circuit issued a decision on the "bundling" of network elements that will largely cripple efforts to create local

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[9]Michigan 271 Application, at ¶ 2.

[10]"Notebaert Says Ameritech Can't Follow FCC Sec. 271 'Road Map'", Communications Daily, Oct. 29, 1997, at 1.

competition in the near term via UNEs. Iowa Utilities Bd. v. FCC, 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997). As Chairman Hundt recognized, the more recent decision standing alone "will have the effect of significantly delaying — perhaps even preventing — many Americans from being able to have more than one choice for their local telephone companies."[11]

The Eighth Circuit's decisions are particularly devastating to the Commission's plan to rely on market forces to reduce interstate access charges to their legitimate, cost-based level. To date, none of the ILECs that have announced that they will no longer provide UNEs in combination has specified the terms and conditions on which they will give CLECs access to their networks so the CLECs can themselves combine the elements — much less specified the terms and conditions that permit CLECs to perform this function efficiently, cost-effectively, and on a non-discriminatory basis.

For the vast majority of customers, therefore, the Eighth Circuit decisions mean resale is the *only* viable means for many CLECs to compete for most customers.[12] When a CLEC competes via resale, however, it is required to pay the ILEC's established

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[11]"Comptel Panel Says Bundling Decisions Could Slow Competition," Communications Daily, Oct. 16, 1997, at 2.

[12]For the foreseeable future, facilities-based competition appears most feasible for small to medium-large business customers. It does not appear to be a realistic option for CLECs wishing to reach residential or the smallest business customers.

charges for interstate access.[13] Thus, resale competition cannot exert any market-based discipline on ILEC access charges. Moreover, the wholesale discounts established by state commissions have generally not been sufficient to make resale competition a robustly feasible economic alternative for CLECs. Because of the Eight Circuit's initial pricing decision, the Commission is largely powerless to alter the state pricing decisions. By undermining the availability of competition via UNEs, the Eighth Circuit has crippled the only realistic near-term means of accomplishing the Commission's goal of cost-based competition driving access prices to their economic level.

C. The Commission Should Initiate a Rulemaking to Address Immediate Prescription of Access Charges Based on Forward-Looking Economic Costs.

The Commission's reliance on the marketplace to control access charges was centrally based on the assumption that meaningful levels of cost-based local competition would develop within a reasonable period of time. Plain common sense now shows that this assumption was misplaced. Meaningful local competition is *not* developing rapidly, let alone any time soon. To the extent that competition develops using resale, it will not exert any downward pressure on interstate access charges. As a result, residential and business consumers will be forced to continue paying bloated interstate access rates in the absence of swift Commission action.

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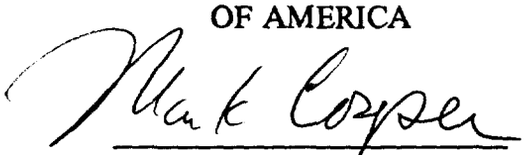
[13]*First Report and Order*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, FCC 96-325 (rel. Aug. 8, 1996), at ¶ 980, *aff'd in part and vacated in part*, Iowa Util. Bd., 120 F.3d 753.

In its *First Report and Order*, the Commission made clear that if local competition failed to develop, it would be necessary to adopt a prescriptive approach to interstate access charges. Since there is no meaningful level of competition to serve consumers, common sense dictates that the time for such an approach is clearly here. The Commission should initiate a rulemaking to establish the proper method for accomplishing a *swift* prescription of interstate access charges to cost-based levels which eventually should be based on forward-looking economic cost. By doing so, the Commission will ensure that this nation's captive residential and business consumers are not left twisting in the winds of false competitive assumptions, appellate court invalidations, and bloated interstate access charges. If American telephone consumers are not to receive the immediate benefits of meaningful competition, the Commission has an obligation to ensure that they at least pay charges that accurately reflect today's costs.

Respectfully submitted,

CONSUMER FEDERATION OF AMERICA



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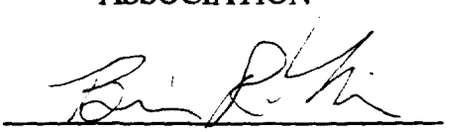

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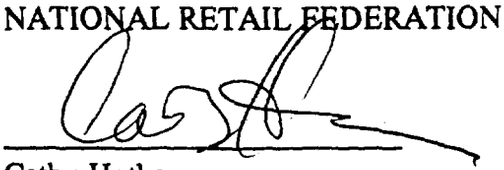

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